

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE CITY OF RICHFIELD
HOUSING AND REDEVELOPMENT AUTHORITY

In the Matter of the Business Relocation
Claims by Walser Buick/Isuzu (WBI) and
Motorwerks, Inc. (BMW)

ORDER CLOSING
RECORD

By a letter dated April 13, 2004, Respondent Richfield Housing and Redevelopment Authority (HRA) filed a written request that the record in this matter be closed. Claimants WBI and BMW filed a response to the request by letter dated April 19, 2004.

The Richfield HRA is represented by Robert J.V. Vose, Esq., Kennedy and Graven, 200 S. 6th Street, Suite 470, Minneapolis, MN 55402. The Claimants WBI and BMW are represented by John Morpew, Esq., of the firm of Schnitker and Assoc., P.A., 2300 Central Avenue NE, Minneapolis, MN 55418.

This order is the final administrative decision. Judicial review of this decision may be had by writ of certiorari to the Minnesota Court of Appeals.^[1]

Based upon the filings by the parties, the record in this matter, and for the reasons set out in the Memorandum which follows:

IT IS HEREBY ORDERED that:

1. The record in this proceeding is closed.
2. That the period for filing a petition for judicial review of this final administrative decision commences upon receipt of this Order.

Dated this 21st day of April 2004.

/s/ George A. Beck
GEORGE A. BECK
Administrative Law Judge

MEMORANDUM

By an Order dated March 18, 2004, the Administrative Law Judge reopened the record in this matter for the sole purpose of taking the testimony of Ron Fanin, an employee of the Federal Highway Administration, on the issue of allowance of benefits for professional planning costs. The Order was premised upon the assurance by counsel for the Claimants that Mr. Fanin was willing to testify if the matter was reopened. The Order directed that Mr. Fanin's testimony would be taken under oath by telephone at a time and date to be promptly arranged by counsel for the Claimants. Subsequent to the Order, counsel for the Claimants submitted letters dated March 24 and March 29, 2004 indicating that he was still in the process of lining up Mr. Fanin to arrange an appropriate time to take his testimony. By a letter dated April 1, 2004, counsel for the HRA expressed concern about the delay and questioned whether Mr. Fanin had authority to speak for the FHA.

In an April 8, 2004 letter, counsel for the Claimants stated he had learned that there are formal procedures to follow, that are set out in federal regulations, to obtain the testimony of an FHA employee. Counsel stated that Mr. Fanin would most likely not be allowed to testify, but suggested that each party submit up to 10 interrogatories to Mr. Fanin. In an April 13, 2004 letter, counsel for the HRA objected to the procedure and argues that under federal regulations^[2] an FHA employee may not testify as an expert or opinion witness with regard to any matter arising out of his or her official duties with the Department. The Claimants seek to obtain Mr. Fanin's interpretation of federal law. He is therefore not a fact witness, but rather an opinion witness within the meaning of the federal regulation.

More importantly, however, the procedure proposed by the Claimants is an unacceptable limitation on the HRA's right to cross-examine a witness offered by the Claimants. The HRA states that it would cross-examine Mr. Fanin concerning his authority to speak for the FHA, whether his opinion is entitled to any deference, and ask him to comment on the Minnesota Department of Transportation's interpretation of the regulations in question. The testimony sought from Mr. Fanin addresses a central issue in this proceeding. Accordingly, the right of cross-examination is important and cannot be abridged by the procedure suggested by the Claimants. In this situation, written questions would not effectively allow the HRA to test the accuracy of the answers submitted by Mr. Fanin. In light of the inability of the Claimants to produce the witness, and the doubt that Mr. Fanin is able to testify as requested under federal regulations, it is appropriate to close the administrative record in this matter at this point.

G.A.B.

^[1] In re Application of Relocation Benefits of James Brothers Furniture, Inc., 642 N.W. 2d 91, 97 (Minn. Ct. App. 2002).

^[2] 49 CFR § 9.9(b)(c).